

c. 8.10.04 (3)

IN THE HIGH COURT OF CHHATTISGARH AT

BILASPUR

W.P.No 212/04

PETITIONER

Smt. Harminder Kaur Garcha,
W/o. Gurudeep Singh Garcha,
aged about 50 years, R/o.
Shankar Nagar Raipur (C.G.).

VERSUS

RESPONDENTS

1. Motor Accident Claim Tribunal
Kawardha.
2. United India Insurance Co.
Branch Office No.1, Amar
Complex, LIC Road Raipur.
3. Goura Yadav, S/o. Milan
Yadav, aged about 27 years,
Dirver, R/o. Pathupara
Kawardha (C.G.).
4. Bisahin Bai, W/o. Bhagat
Gond, aged about 50 years,
R/o. Sakin Jamunia, District
Kabir Dham (C.G.).
5. Aksaral Hague, S/o. Shri
Badral Hague, aged about 30
years, R/o. Sakin Sere Panjab
Gali Ward No. 15, Tulsipur
Rajnandgaon (C.G.)
6. Durgesh Kumar, S/o. Hiralal
Korosia, aged about 28 years,
Sakin Kilapara, Rajnandgaon.

P. R. No. 18-10/04
Presented by Shri. Santosh Chandra
dated 2-1-04



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7. Ramsahay Uke, S/o. Late Suktal Singh Uke, aged about 51 years, R/o. Sakin Bandha Bazar, Ambagarh Chowki, Distt. Rajnandgaon.
8. Amrika Bai, W/o. Durgesh Kumar Karosia, aged about 24 years, Sakin Kilapara Rajnandgaon, Distt. Kabir Dham (C.G.).
9. Munni Bai, W/o. Ganesh Ram Gond, aged about 36 years, Sakin Mangaon, Distt. Kabir Dham (C.G.).
10. Bharat, S/o. Babujai, aged about 40 years, R/o. Sakin Village Sari, Tahsil Kawardha, Distt. Kabir Dham (C.G.).



WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA.

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO.2131 OF 2004

Smt. Harmindar Kaur Garcha

- Versus -

Motor Accident Claims Tribunal & others

ORDER

Post for: 26 -08-2004

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.2131 OF 2004

Smt. Harmindar Kaur Garcha

- Versus -

Motor Accident Claims Tribunal & others

Present: -

Mr. B.K. Rawat, Advocate:

For the petitioner.

ORDER

(Passed on 26/8 August, 2004)

L.C. BHADOO, J.

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India for quashing the award-dated 30.01.2004 passed by the Motor Accident Claims Tribunal, Kwardha in Claim Case Nos. 30/2002 to 34/2002, 103/02 & 102/02 to the extent of exonerating the respondent Insurance Company and consequently directing the Insurance Company to recover the amount of award from the petitioner in respect of the common award passed in all the claim cases.
2. Brief facts leading to filing of this petition are that the petitioner herein is engaged in the transport business and she is the owner of Bus No. MP23-J-0074 of which Gora Yadav was the driver. On 18.3.2000 at about 12.30 p.m. Gora Yadav was driving the said bus on Rajnandgaon-Kwardha road. When the said bus reached near the forest post of Village Silhati, the said bus met with an accident, on which a criminal case was registered under Crime No.28/2000 for commission of the

offence under Sections 279 & 337 of IPC. In the said accident, seven persons received various injuries, therefore, the said persons filed claim cases before the M.A.C.T, Kawardha, numbers of which are mentioned above.

3. Learned Tribunal awarded compensation to the claimants as mentioned in the award. Since the amount awarded to each of the claimants was below Rs.10,000/-, therefore, the petitioner was not entitled to file an appeal against the said award. Accordingly, the petitioner has preferred this writ petition.
4. In this petition the main challenge as mentioned in Para 5 of the petition is that Gorya Yadav, who was driving the vehicle was having valid licence but that has not been considered by the learned Tribunal. It has erroneously considered that Gora Yadav was not having valid licence that is why the respondent-Insurance Company has been exonerated on the ground of breach of policy and allowed the Company to recover the award amount from the petitioner.
5. I have learned counsel for the petitioner on admission.
6. Learned counsel for the petitioner argued that the learned Tribunal was not right in holding that Gora Yadav was not holding the valid licence, in fact, Gora Yadav was in possession of the valid licence for driving the heavy duty vehicles i.e. the bus.
7. I have perused the impugned award. In Paragraph 11 of the award it has been specifically mentioned that on behalf of the Insurance Company one Mohd. Yusuf Ali, Branch Manager conducted an enquiry. On enquiry, it was found that Gora

Yadav was not holding valid licence and to the same effect Mohd. Yusuf Ali gave evidence before the learned Tribunal and said that since Gora Yadav was not in possession of the valid licence, there was a breach of policy, as per the insurance policy there was a condition that driver of the vehicle must possess the valid licence to drive the vehicle. One clerk namely Siyaram Dhruv (witness No.3) of Regional Transport Authority Office, Durg appeared before the Tribunal and gave evidence after showing the register of licences maintained in the R.T.A. office to the effect that on the date of accident Gora Yadav was in possession of licence for driving light motor vehicles and he was not authorized to drive passenger vehicle. Therefore, the arguments of the learned counsel for the petitioner is without any substance that Gora Yadav was in possession of valid licence of driving of passenger vehicle. A specific plea was raised on behalf of the respondent No.3 in claim cases that at the time of driving the said bus the driver Gora Yadav was not in possession of the valid licence and same kind of evidence adduced by respondent No.3 and also by Siyaram Dhruv, Clerk of R.T.O. office. No rebuttal evidence was adduced on behalf of respondent No.1 & 2 saying that respondent No.1 was in possession of the valid licence to drive the passenger bus. Moreover, such a licence was not tendered into evidence.

8. As such, I do not find any illegality and infirmity in the impugned award passed by the learned Tribunal holding that Gora Yadav was not in possession of the valid licence for driving the passenger vehicle, there was a breach of policy and on account of that the insurance company is within its right to

recover the compensation amount from the owner of the petitioner.

9. In the result, I do not find any illegality and infirmity in the impugned order. This petition is without any force, same is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C.BHADOO
Judge

roshan/-